

STATE OF MINNESOTA  
IN SUPREME COURT

OFFICE OF  
APPELLATE COURTS

OCT - 5 2006

FILED

Tim Breza, Larry Buboltz,  
Dan Dorman, Morrie Lanning,  
Michael Lang, Keith Langseth,  
Jerry Miller, H. Dan Ness,  
Tom Rukavina, Kathy Serva,  
Eric Sorensen, Mark Voxland,  
Lauri Winterfeldt-Shanks,

Petitioners,

vs.

**PETITION PURSUANT  
TO MINN. STAT. 204B.44  
TO ENJOIN ELECTION  
ON BALLOT QUESTION**

Mary Kiffmeyer, Minnesota  
Secretary of State,

Respondent.

Douglas Peine  
Atty. Reg. No. 84979  
2460 Beverly Road  
St. Paul, Minnesota 55104  
612.308.0014

ATTORNEY FOR PETITIONERS

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**PETITION FOR RELIEF**

Petitioners ask this Court to enjoin an election, scheduled for November 7, 2006, on the following proposed constitutional amendment question:

Shall the Minnesota Constitution be amended to dedicate revenue from a tax on the sale of new and used motor vehicles over a five-year period, so that after June 20, 2011, all of the revenue is dedicated at least 40 percent for public transit assistance and not more than 60 percent for highway purposes?

Yes \_\_\_\_\_

No \_\_\_\_\_

If this amendment is adopted, two sections will be added to Article XIV of the Constitution to read:

Section 12. Beginning with the fiscal year starting July 1, 2007, 63.75 percent of the revenue from a tax imposed by the state on the sale of a new or used motor vehicle must be apportioned for the transportation purposes described in section 13, then the revenue apportioned for transportation purposes must be increased by ten percent for each subsequent fiscal year through June 20, 2011, and then the revenue must be apportioned 100 percent for transportation purposes after June 30, 2011.

Section 13. The revenue apportioned in section 12 must be allocated for the following transportation purposes: not more than 60 percent must be deposited in the highway user tax distribution fund, and not less than 40 percent must be deposited in a fund dedicated solely to public transit assistance as defined by law.

H.F. 2461, ch. 88 secs. 9 & 10, 2005 Minn.Laws 459.

## PROCEDURAL MATTERS

### A. Authority to Petition under Minn.Stat.204B.44

We proceed under **Minn.Stat. sec. 204B.44:**

Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions or wrongful acts which have occurred or are about to occur:

(a) An error or omission in the placement or printing of the name or description of any candidate or any question on any official ballot;

(b) Any other error in preparing or printing any official ballot;

(c) Failure of the chair or secretary of the proper committee of a major political party to execute or file a certificate of nomination;

(d) Any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning an election.

The petition shall describe the error, omission or wrongful act and the correction sought by the petitioner. The petition shall be filed with any judge of the Supreme Court in the case of an election for state or federal office or any judge of the district court in that county in the case of an election for county, municipal, or school district office. The petitioner shall serve a copy of the petition on the officer, board or individual charged with the error, omission or wrongful act, and on any other party as required by the court. Upon receipt of the petition the court shall immediately set a time for a hearing on the

*matter and order the officer, board or individual charged with the error, omission or wrongful act to correct the error or wrongful act or perform the duty or show cause for not doing so. The court shall issue its findings and a final order for appropriate relief as soon as possible after the hearing. Failure to obey the order is contempt of court.*

### **B. Jurisdiction Under the Statute**

This statute expressly confers on this Court original jurisdiction over issues involved in "state"wide elections.<sup>1</sup>

### **C. Subject Matter Jurisdiction**

Subsection (a) of the statute extends this Court's jurisdiction not only over issues involving a "candidate" but also "any question on any official ballot."

This language was not a part of the predecessor statute in effect in 1932, i.e., **Minn.Stat. sec. 347 (1927)**. Under that law, only those challenges regarding "candidates" were expressly authorized by the legislature.<sup>2</sup> Even so, this Court held that its jurisdiction also included challenges to

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<sup>1</sup>Only issues in elections "for county, municipal, or school district office" proceed first to the district court.

<sup>2</sup>The phrase was added in **1990 Minn. Laws ch. 453, sec. 6**.

ballot questions:

There can be no essential difference between submitting to the voters a candidate who has no legal right to appear on the ballot and submitting a proposed amendment to the Constitution in a form therein prohibited.

Winget v. Holm, 187 Minn. 78, 244 N.W. 331, 332 (Minn. 1932); Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis, 293 Minn. 227, 198 N.W.2d 531, 536 (Minn. 1972); see also, Fugina v. Donovan, 259 Minn. 35, 104 N.W.2d 911 (Minn. 1960).

And thus the "errors and omissions" to be corrected under section 204B.44 are not simply "mechanical" or "procedural" ones but also those constitutional infirmities arising from the Legislature's choice of language in a particular ballot question. Page v. Carlson, 48 N.W.2d 274 (Minn. 1992); see also, Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis, 293 Minn. 227, 198 N.W.2d 531, 536 (Minn. 1972); Fugina v. Donovan, 259 Minn. 35, 104 N.W.2d 911 (Minn. 1960); Winget v. Holm, 244 N.W. 331, 332 (Minn. 1932).

#### D. Standing

"Any individual" may file a petition under 204B.44.

This statutory language "has been broadly construed" to grant standing to any "person qualified to vote", Moe v. Alsop, 288 Minn. 323, 325, 180 N.W.2d 255, 257 (1970), or at

least to any "registered voter", Clifford v. Hoppe, 357 N.W.2d 98, 100 n.1 (Minn. 1984).<sup>3</sup>

All of the Petitioners hereto satisfy both tests. (See attached Petitioners' affidavits).

### STATEMENT OF FACTS

#### Brief History of the Motor Vehicle Sales Tax

Although largely irrelevant to the narrow issue raised in this Petition, for the convenience of the Court we have attached in the Appendix an Information Brief from the House of Representatives Research Department which tracks the lengthy history of the Motor Vehicle Sales Tax ("MVST"). (A.<sup>4</sup>3-11).

Suffice it to say that the question of how to use the revenues generated by the MVST has been debated since the tax was enacted in 1967. The flashpoint of that debate has been the legislature's initial decision to direct the tax's revenues into the general fund. Some have argued over the years that the MVST is a user tax and as such should be -

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<sup>3</sup>These similar but distinctive tests were identified in Schiff v. Griffin, 639 N.W.2d 56 (Minn.App. 2001), but there, as here, the court was not obliged under the facts to choose between them.

<sup>4</sup>Citations preceded by "A." are to the pages of the Appendix attached to this Petition.

like the gas tax and vehicle license tax - dedicated to transportation. (A.3-4).

Proponents of that dedication were successful in the 1980's but not permanently so. The Information Brief traces in detail the ways in which the dedication to highways "was periodically changed or suspended" and then "abolished entirely beginning in fiscal year 1992" only to be partially restored again in 2000. (A.4-8).

In 2001 the legislature for the first time allocated a portion of MVST revenue to be used for transit operations, i.e., bus and light rail. The intention here was to assist local governments after they had been prohibited from using property taxes for transit. (A.8-9).

In 2003 the allocation to transit was increased "at the expense of the share for dedicated highway funds." (A.9-10).

### **2005 Legislative Session**

In 2005 the legislature passed a transportation bill which included with it the proposed constitutional amendment challenged in this Petition. The bill itself was vetoed by the Governor<sup>5</sup>, however the proposed constitutional amendment survives in accordance with the Opinion of the Attorney

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<sup>5</sup>On May 19, 2005. **Journal of the House, May 19, 2005 at 5039.**

General (also attached, at A.32) on the theory that the amendment is not subject to gubernatorial veto. (A.10-11).

### **2006 Legislative Session**

During the 2006 legislative session three different bills were introduced in the House and Senate to clarify the amendment question. **H.F.3048/S.F.2446; H.F.2915/ S.F.2444; H.F.3173/S.F.2444.** The first two would have *constitutionally* guaranteed a firm 60 % for highways and 40 % for transit. The third favored *statutorily* dedicating the 60/40 split.

Ultimately, the constitutional guarantee prevailed in both Senate and House Omnibus Transportation bills, and so both went to conference committee with the firm 60/40 dedication in place. **S.F.3764; H.F.2461.**

But there they both languished and died, thus leaving the 2005 version of the amendment ballot question to go to the voters this November 7.

## ARGUMENT

### A. The Applicable Law:

#### **The Language of a Proposed Constitutional Amendment Ballot Question Must Not Be Misleading or Deceitful**

Submitting a proposed constitutional amendment to an election by the people of Minnesota is a legislative function. But it is a function that does not operate free of constitutional restraints:

Neither the form nor the manner of submitting a question of amendment to the people is prescribed by the constitution. They are left to the judgment and discretion of the legislature, **subject only to the implied limitation that they must not be so unreasonable and misleading as to be a palpable evasion of the constitutional requirement to submit the law to a popular vote.**

State v. Stearns, 72 Minn. 200, 75 N.W. 210, 214 (Minn. 1898), reversed on other grounds, 21 S.Ct. 73, 179 U.S. 223, 45 L.Ed. 162 (emphasis added).

This language was reiterated in State v. Duluth & N.M.Ry.Co., 102 Minn. 26, 112 N.W. 897, 898 (Minn. 1907).

Further guidance was provided by the Court in 1960 in the context of whether proposed amendments need to be separately submitted to the voters. Without referencing either State v. Stearns or State v. Duluth & N.M.Ry.Co., the opinion in Fugina v. Donovan, 104 N.W.2d 911 (Minn. 1960), says that the purpose of requiring separate submission is:

to prevent imposition upon or deceit of the public by the presenting of a proposal which is misleading

or the effect of which is concealed or not readily understandable.

At 914; see also, Elbers v. Growe, 502 N.W.2d 810, 814 (Minn.App. 1993).

## B. Application of the Law to the Facts

### 1. What the Ballot Question Actually Says:

The ballot question at issue in this case addresses the allocation of revenue from the tax on automobile and truck sales. It proposes that all of that revenue be "**dedicated at least 40 percent for public transit assistance and not more than 60 percent for highway purposes.**"

Laid bare, the allocation is this:

FOR HIGHWAYS:    0   -   60 %

FOR TRANSIT:     40 - 100 %

### 2. How the Ballot Question is Misleading and Deceptive:

What the ballot question obscures is the crucial fact that the amendment gives authority - constitutional authority, no less - for the entire fund to be applied to transit with highways receiving nothing.

This is a radical and permanent change that needs to be clearly spelled out to the voters.

This the ballot question does not do. To the contrary, by artful opposition of the phrases "not more than" and "not less than," the casual reader is left to conclude that he or she is voting to allocate 40 percent to public transit and 60 percent to highways.

Most telling is the fact that the "60 percent" number in the ballot question is entirely superfluous. Obviously if transit is to get "not less than 40 percent," then the maximum of 60 percent for transportation is a given. Its inclusion is not only unnecessary but misleading.

And perhaps deliberate, as well. It is difficult not to suspect on the part of the drafter the shrewd insight that including both "40 percent" and "60 percent" in the ballot question would trick most voters into reading a firm 40/60 split of the revenue.

In any event, whether deliberate or not, all parties have fallen victim.

### 3. Evidence that the Amendment Will Be Confusing for Voters

#### a. The Press Is Confused By the Ballot Language:

We have attached in the appendix hereto a number of press clippings from the local media. The titles of several tell the tale:

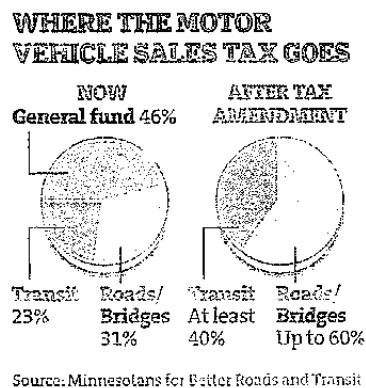
*"Confusion about MVST ballot question . . ."* (A.12)

*"Legislators take a crack at clearer language . . ."*  
(A.15)

*"Confusing Ballot Language"* (A.22)

*"Transportation-funding amendment is clear as mud"*  
(A.23)

Most telling is the strikingly misleading graphic accompanying the Star Tribune article of September 30<sup>th</sup>. It purports to show the transit/highway allocation before and after the amendment via two pie charts:



A picture is worth a thousand words. The casual reader - even the attentive reader - will come away with the crisp

and confident mental image that roads and bridges are going to get a hard 60% and transit 40%. That's what the pie chart clearly shows. Readily understandable. More reliable than words. A win/win situation for everyone.

But it's not true.

Obviously the press is the primary source of information for the voters. If the press does not understand the implications, the voters have little chance.

**b. The Pollsters Are Confused by the Ballot Language:**

The Star Tribune article of September 20 attached at page 19 of the Appendix, grew out of an effort by the Minnesota Poll to clarify "the confusing language that will appear on the ballot." To that end, the Poll put before a sample of voters:

1. the language of the amendment as it reads; and
2. the pollsters' "simplified version". (A.19).

Unfortunately, whoever drafted the "simplified version" obviously did not understand the full implication - or at least was unsuccessful at making it any less obscure:

THE AMENDMENT: "all of the revenue is dedicated at least 40 percent for public transit assistance, and not more than 60 percent for highway purposes"

THE "SIMPLIFIED" VERSION: "with at least two-fifths going to public transit and the rest going to highways"

What the poll should have asked is whether the voters would vote for an amendment that authorizes from 40 to 100% of the revenue be spent on transit with 0 to 60% going for highways.

c. **The Attorney General's Office Is Confused by the Ballot Language:**

Pursuant to **Minnesota Statutes section 3.21**, the attorney general is required to "furnish to the secretary of state a statement of the purpose and effect of all amendments proposed" along with "the portions of the context that the attorney general deems necessary to understand the amendment."

In **Knapp v. O'Brien**, 288 Minn. 103, 179 N.W.2d 88 (1970), it was held that just such a statement saved an otherwise confusing ballot question. The Court's theory, post-election, was "that people relied on the Attorney General's explanation of the effect of the amendment when approving the amendment."

We would suggest that, even in the best of circumstances, it is a doubtful proposition that enough of the electorate actually reads such statements to make any difference.

In any event, the issue is moot here. The Attorney General's office did in fact issue a 3.21 statement. We have attached it at page 30 of the Appendix. On the transit/highway split, it is even less clear than the Minnesota Poll's "simplified version":

The amounts so apportioned must be allocated between the local transit assistance fund and the highway tax distributing fund, with at least 40 percent going to the local transit assistance fund.

Again, what gets lost in the verbiage is the critical fact that highways might well end up with nothing. And it is simply not realistic to expect voters themselves to draw out this implication from the fog.

**d. The Secretary of State's Office Is Confused by the Ballot Language:**

The Secretary of State has affixed a title to the amendment question that will be included on the ballot:

PHASED IN DEDICATION OF THE MOTOR VEHICLE SALES TAX  
TO HIGHWAYS AND PUBLIC TRANSIT

(<http://www.sos.state.mn.us/home/index.asp?page=10&recordid=86&returnurl=index%2Easp%3Fpage%3D10>)

Its purpose is to help enlighten the voters. At least with regards to the crucial 40/60 issue, it succeeds only in helping entrench the idea that both highways and public transit are guaranteed revenue under the amendment. The

more accurate version would read: "PHASED IN DEDICATION OF THE MOTOR VEHICLE SALES TAX TO PUBLIC TRANSIT AND PERHAPS TO HIGHWAYS".

**e. The Legislature Itself Was Confused by the Ballot Language:**

The significant issue in the debate over transportation in both the House and the Senate in 2006 was not whether the 2005 ballot question was confusing. The issue was how to fix it. **See Senate Webcast at [www.senate.leg.state.mn.us/media/archive/2006/floor/index.shtml#header](http://www.senate.leg.state.mn.us/media/archive/2006/floor/index.shtml#header), May 11, 2006, 04:27:01 f.; House Television Program at [www.house.leg.state.mn.us/htv/archivesHFS.asp?ls\\_year=84](http://www.house.leg.state.mn.us/htv/archivesHFS.asp?ls_year=84), May 16, 2006, 00.15.01 f.**

For example, this from Senator Scott Dibble:

To be sure, the language that was proposed originally that came over last year was convoluted, was confusing, had lots of provisions and no doubt folks who weren't yet already familiar with this particular ballot question probably would have looked at it, eyes glazed over, and passed over it.

**At 04:38:11.**

Noone rose to dispute the point in either the Senate or the House.

In fact, there is testimony that in 2005 both bodies believed the amendment language would effect a firm 60/40 split:

It's a firm 40 %. That's what was portrayed last year when the transportation bill passed the Senate. On the floor of the Senate we were told it was a firm 40 and 60.

**Sen. Rod Skoe at 04:42:38.**

I know those who voted for this transportation bill last year . . . the intent at that time was to vote for a 60/40 split.

**Rep. Paul Marquart at 00:37:39.**

These statements are especially troubling insofar as they, too, suggest a deliberate intent by some legislators to mislead their colleagues.

In any event, if a substantial number of the legislators themselves could read the ballot question and assume a firm 60/40 split, the voters cannot be expected to fare any better.

### **C. Remedy: Injunction**

Where the Court finds that a particular ballot question is in fact misleading or not readily understandable, it is "proper" for the Court "to enjoin" the Secretary of State from holding an election on the question. **Housing and Redevelopment Authority of Minneapolis v. City of Minneapolis**, 198 N.W.2d 531, 536 (Minn. 1972), citing **Winget v. Holm**, 244 N.W. 331, 332 (Minn. 1932).

### CONCLUSION

Bad legislation is one thing. But bad legislation that misleads the electorate in the voting booth is another.

Whether the result of a deliberate intent to deceive or simply shoddy, last-minute draftsmanship, this sort of legislative process is a disservice to the people of Minnesota, and it cannot be countenanced.

It cannot be countenanced because it cuts at the very heart of the democratic system. Only when "the people are well-informed," wrote Jefferson, "can they be trusted with their own government," just as they "cannot approve what they do not understand." **Jefferson to Richard Price, 1789; Jefferson, Opinion on Apportionment Bill, 1792.**

For these reasons we ask this Court to enjoin an election on the MVST amendment question.

Respectfully submitted,



Douglas Peine  
Atty.Reg.No. 84979  
2460 Beverly Road  
St. Paul, Minnesota 55104  
612-308-0014


ATTORNEY FOR PETITIONERS

DATED: 10/4/06

I am a registered voter in the State of Minnesota.

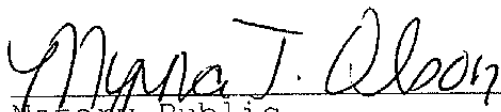
October 4, 2006

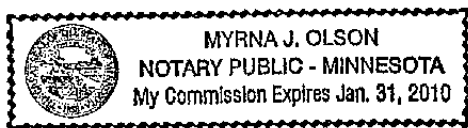
DATED:

  
Petitioner

Subscribed and sworn to before me,

this 4 day of October, 2006

  
Notary Public



I am a registered voter in the State of Minnesota.

DATED:

Oct 5, 2006

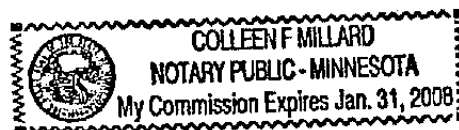
*Jerry S. Buboltz*  
Petitioner

Subscribed and sworn to before me,

this 5<sup>th</sup> day of October, 2006

*Colleen F. Millard*

Notary Public



I am a registered voter in the State of Minnesota.

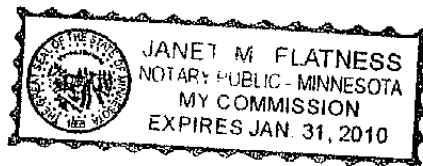
10/03/06

DATED:

*Janet M. Flatness*  
Petitioner

Subscribed and sworn to before me,  
this 3<sup>rd</sup> day of October, 2006

*Janet M. Flatness*  
\_\_\_\_\_  
Notary Public



I am a registered voter in the State of Minnesota.

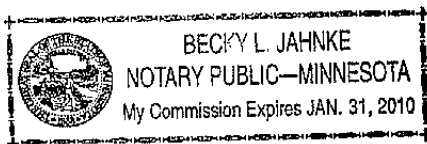
*Morris L. Lanning*

Morris L. Lanning  
Petitioner

DATED:

Subscribed and sworn to before me,  
this 4<sup>th</sup> day of October, 2006

*Becky L. Jahnke*  
Notary Public



I am a registered voter in the State of Minnesota.

DATED: *October 4, 2006*

*Michael Lang*  
Michael Lang  
Petitioner

Subscribed and sworn to before me,

this 4<sup>th</sup> day of October, 2006

*Kathleen M Riordan*  
\_\_\_\_\_  
Notary Public



I am a registered voter in the State of Minnesota.

*Keith Langseth*

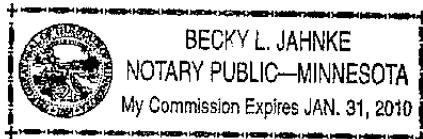
Keith Langseth

DATED: 10-4-06

Petitioner

Subscribed and sworn to before me,  
this 4<sup>th</sup> day of October, 2006

*Becky L. Jahnke*  
\_\_\_\_\_  
Notary Public



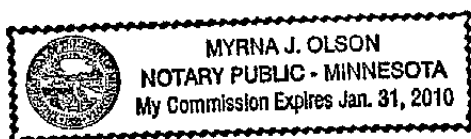
I am a registered voter in the State of Minnesota.

DATED: 10-4-06

*Jerome S. Gulley*  
Petitioner

Subscribed and sworn to before me,  
this 4th day of October, 2006

*Myrna J. Olson*  
Notary Public



I am a registered voter in the State of Minnesota.

10/4/06  
DATED:

*Harold Daniel Ness*  
Petitioner

Subscribed and sworn to before me,  
this 4<sup>th</sup> day of October, 2006

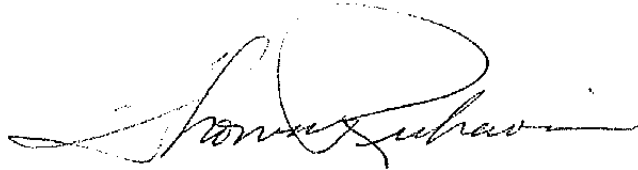
*Lori E. Alm-West*  
Notary Public



I am a registered voter in the State of Minnesota.

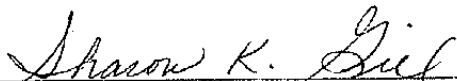
DATED:

10/4/06



Petitioner

Subscribed and sworn to before me,  
this 4<sup>th</sup> day of October, 2006

  
Notary Public



I am a registered voter in the State of Minnesota.

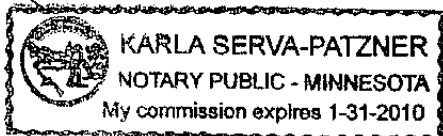
DATED: 10-4-2006

*Kathleen K Serva*  
Petitioner

Subscribed and sworn to before me,

this 4 day of October, 2006

*Karla R Serva-Patzner*  
Notary Public



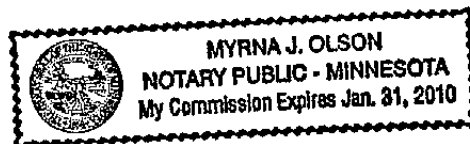
I am a registered voter in the State of Minnesota.

DATED: *October 4, 2006*

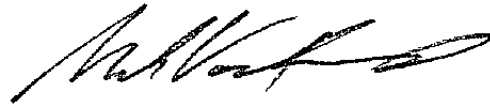
*Eric Wahl Swensen*  
Petitioner

Subscribed and sworn to before me,  
this 4 day of October, 2006

*Myrna J. Olson*  
Notary Public



I am a registered voter in the State of Minnesota.


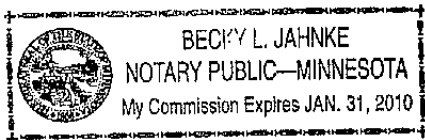


Mark Voxland

DATED: 10-4-06

Petitioner

Subscribed and sworn to before me,  
this 4<sup>th</sup> day of October, 2006

  
\_\_\_\_\_  
Notary Public

I am a registered voter in the State of Minnesota.

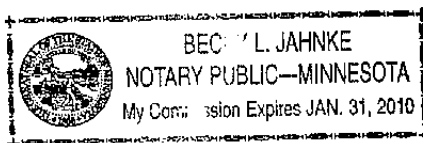
*Lauri Winterfeldt-Shanks*  
Lauri Winterfeldt-Shanks

DATED: *October 4, 2006*

Petitioner

Subscribed and sworn to before me,  
this 4<sup>th</sup> day of October, 2006

*Betty L. Jahnke*  
\_\_\_\_\_  
Notary Public



## APPENDIX

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House Research Short Subjects, "The Motor Vehicle Sales Tax Transfer: Current Law," John Williams, Nov. 2005	A.10
"Confusion about MVST ballot question fuels funding debate at Capitol," by Dan Olson, Minnesota Public Radio, March 30, 2006	A.12
"Legislators take a crack at clearer language: A House panel rewrites the ballot question for a proposed constitutional amendment dedicating all vehicle tax revenues to roads and transit," by Laurie Blake, Minneapolis Star Tribune, April 12, 2006	A.15
"Constitutional amendment needs spin, supporters say: A Coalition of 700 groups begins a campaign to explain the ballot measure," by Laurie Blake, Minneapolis Star Tribune, May 25, 2006	A.17
"Minnesota Poll: Most say more funds for roads," by Laurie Blake, Minneapolis Star Tribune, Sept. 20, 2006	A.19
"Transportation-funding amendment is clear as mud," Minneapolis Star Tribune, August 15, 2006	A.23
"Voters to choose: Transit or services?" Minneapolis Star Tribune, Sept. 30, 2006	A.25
"Ballot question would set aside money for roads and transit," by Dan Olson, Minnesota Public Radio, Oct. 1, 2006	A.27

Section 3.21 letter, July 3, 2006, from Christine  
B. Eller, Asst. Attorney General, to Mary Kiffmeyer,  
Secretary of State A.30

Opinion Letter, March 9, 1994, from Hubert H. Humphrey,  
Attorney General, and John R. Tunheim, Chief Deputy  
Attorney General, to the Honorable Arne H. Carlson,  
Governor A.32

**Proposed MVST Constitutional Amendment Ballot Question**

Shall the Minnesota Constitution be amended to dedicate revenue from a tax on the sale of new and used motor vehicles over a five-year period, so that after June 20, 2011, all of the revenue is dedicated at least 40 percent for public transit assistance and not more than 60 percent for highway purposes?

Yes\_\_\_\_\_ No\_\_\_\_\_

**If the Amendment is Adopted, these Two  
Sections Will Be Added to Article XIV**

Section 12. Beginning with the fiscal year starting July 1, 2007, 63.75 percent of the revenue from a tax imposed by the state on the sale of a new or used motor vehicle must be apportioned for the transportation purposes described in section 13, then the revenue apportioned for transportation purposes must be increased by ten percent for each subsequent fiscal year through June 20, 2011, and then the revenue must be apportioned 100 percent for transportation purposes after June 30, 2011.

Section 13. The revenue apportioned in section 12 must be allocated for the following transportation purposes: not more than 60 percent must be deposited in the highway user tax distribution fund, and not less than 40 percent must be deposited in a fund dedicated solely to public transit assistance as defined by law.

## **204B.44 Errors and omissions; remedy.**

Any individual may file a petition in the manner provided in this section for the correction of any of the following errors, omissions or wrongful acts which have occurred or are about to occur:

(a) An error or omission in the placement or printing of the name or description of any candidate or any question on any official ballot;

(b) Any other error in preparing or printing any official ballot;

(c) Failure of the chair or secretary of the proper committee of a major political party to execute or file a certificate of nomination;

(d) Any wrongful act, omission, or error of any election judge, municipal clerk, county auditor, canvassing board or any of its members, the secretary of state, or any other individual charged with any duty concerning an election.

The petition shall describe the error, omission or wrongful act and the correction sought by the petitioner. The petition shall be filed with any judge of the Supreme Court in the case of an election for state or federal office or any judge of the district court in that county in the case of an election for county, municipal, or school district office. The petitioner shall serve a copy of the petition on the officer, board or individual charged with the error, omission or wrongful act, and on any other party as required by the court. Upon receipt of the petition the court shall immediately set a time for a hearing on the matter and order the officer, board or individual charged with the error, omission or wrongful act to correct the error or wrongful act or perform the duty or show cause for not doing so. The court shall issue its findings and a final order for appropriate relief as soon as possible after the hearing. Failure to obey the order is contempt of court.

HIST: 1981 c 29 art 4 s 44; 1986 c 444; 1990 c 453 s 6

## **The Motor Vehicle Sales Tax Transfer**

### **A Chronology**

The use of revenues from the motor vehicle sales tax, also known as the motor vehicle excise tax, for transportation purposes has been a legislative issue for more than two decades. This information brief chronicles the issue from its emergence in 1981 to its reemergence in the 2000s.

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#### **Summary**

Ever since the enactment of the motor vehicle sales tax (MVST) in the 1960s some people have argued that since its revenue is generated by motor vehicles it should be dedicated to transportation. That concept was finally enacted into law in 1981 but fell victim to several budget crises throughout the next decade, ending entirely in 1991. In 2000 the transfer of MVST revenues to dedicated transportation funds was brought back, but for the purpose of providing motor vehicle tax and property tax relief rather than additional transportation spending. Most recently in 2003 the dedication was reshuffled to provide additional money for transit assistance.

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Many House Research Department publications are also available on the Internet at: [www.house.mn/hrd/hrd.htm](http://www.house.mn/hrd/hrd.htm).

## 1981-1993: An On-Again, Off-Again Policy

The legislature enacted the state sales tax in 1967 and made it applicable to the sale of new and used motor vehicles. In 1971 the legislature put the sales tax on motor vehicles into a separate chapter of the statutes and renamed it the motor vehicle excise tax. (The tax was later renamed the motor vehicle sales tax, or MVST, the acronym that will be used here.) It was levied at the same rate as the sales tax on the sale price of motor vehicles, minus any trade-in allowance. Its revenue, like sales tax revenue, was directed into the state's general fund.

For years many people argued that the motor vehicle excise tax was really a highway user tax like the gas tax and the motor vehicle license tax, and that the revenue from it should be treated like the revenue from those other taxes—that is, dedicated to highways. The final report of the legislature's Select Committee on Transportation in 1980 adopted this approach by recommending that MVST revenues be gradually transferred out of the general fund and into the dedicated highway fund along with gas tax and license tax revenues.

### 1981

The highway financing bill the legislature passed in 1981 contained the first effort to transfer MVST revenues out of the general fund. The transfer would not take place immediately but would be phased in according to the following schedule:

Biennium	General Fund	Transportation
1982-83	100%	0%
1984-85	75	25
1986-87	50	50
1988-89	25	75
1990-91 and after	0	100

House Research Department

As the use of the word "transportation" indicates, the money transferred out of the general fund would not be used solely for highways but would be divided between highways and transit. Seventy-five percent of the transportation share would go to the dedicated highway fund while 25 percent would go to a new transit assistance fund. The money in the highway fund would be divided among the state, counties, and cities in the same manner as other highway user taxes (62 percent state, 29 percent counties, 9 percent cities) while the transit assistance fund would be allocated 80 percent to transit in the seven-county metropolitan area and 20 percent to transit in the rest of the state.

### 1983

State budget problems in the 1983 session forced the legislature to delay for two years the scheduled transfer of revenues from the general fund to the transportation funds. The revised

schedule read:

Biennium	General Fund	Transportation
1984-85	100%	0%
1986-87	75	25
1988-89	50	50
1990-91	25	75
1992-93 and after	0	100

House Research Department

The 75-25 percent division of transportation share between highways and transit remained.

### 1984

An easing of budget problems allowed the legislature in 1984 to shorten the delay prescribed in 1983. Transfer would begin to take effect in fiscal year 1985 instead of fiscal year 1986. This was a year behind the original 1981 schedule but a year ahead of the revised 1983 schedule. The new schedule would be:

Fiscal Year	General Fund	Transportation
1984	100%	0%
1985	75	25
1986	75	25
1987	75	25
1988-89	50	50
1990-91	25	75
1992-93	0	100

House Research Department

### 1986

The on-again, off-again transfer was off again for the 1986-87 biennium, as the 1986 Legislature again responded to overall budget problems. The cancellation was made retroactive to the beginning of fiscal year 1986. The scheduled transfer for the 1988-89 biennium and subsequent years was left in the law.

### 1987

The legislature restored the MVST transfer for fiscal year 1988 but at a drastically reduced level—5 percent instead of the planned 50 percent. At the same time it reduced the highway share of MVST by the amount needed to fund state subsidies to ethanol producers under a program begun in 1986 and previously paid for from the general fund.

## 1988

The MVST transfer percentage was raised from 5 percent to 30 percent of total revenues for fiscal year 1989.

For the first time a change was made in the distribution of the highway share, which had always previously gone into the highway user tax distribution fund for allocation to the state, counties, and cities. The highway share of the first 25 percent of the transfer would continue to be divided this way but the highway share of the last 5 percent would go entirely to the state trunk highway fund. This division would continue until fiscal 1992, when the counties and cities would be eliminated permanently from the MVST transfer and the entire highway share would go to state trunk highways.

## 1989

The legislature again increased the percent of MVST going to transportation, this time from 30 percent to 35 percent. The 75 percent highway share from this additional 5 percent went to the state trunk highway fund rather than to the highway user tax distribution fund.

## 1990

In the 1990 legislative session there were again budget problems, and again among the first places where the legislature looked for a solution was the MVST transfer. The percentage was reduced back to 30 percent.

## 1991

A budget crisis even more serious than those of the late 1980s engulfed the 1991 legislative session, and among other things, it sank the MVST transfer. Gov. Arne Carlson's budget called for an elimination of the transfer to help make up a substantial general fund shortfall, and seemingly the only question to be answered was whether the transfer would be eliminated permanently or only suspended for another two years. The legislature could not bring itself to end the transfer permanently, but it did suspend the transfer for another two years, returned \$52 million in fiscal year 1991 revenue from MVST to the general fund, and then restored the transfer for the 1994-95 biennium at just 10.6 percent.

Even this transfer was too high for the governor, who was generally opposed to dedicated funds.

He vetoed the legislature's statutory change in the allocation of MVST revenues, an action that was questioned at the time as possibly exceeding the governor's line-item veto power. No court action was taken against it, however, and the veto stood throughout the 1990s.

The 1991 legislative session also saw the final report of the Transportation Study Board, a body of legislators and nonlegislators who made a comprehensive study of the state's transportation needs. The board's recommendations included a proposal to dedicate 50 percent of MVST to transportation, with a portion going specifically for transit, the rest to a multi-modal "transportation services fund." It was indicative of the coming deadlock over transportation

funding that the study board's financing recommendations not only were not enacted but were not even introduced in the legislature.

The rejection of the Transportation Study Board's recommendations did not mean that the legislature had lost interest in the issue of the MVST transfer. Rather, it began a period during which the House and Senate each proposed and sometimes passed legislation to restore the transfer. The deadlock arose from the fact that no two proposals were ever quite alike. Not only were the two houses unable to agree on a distribution of MVST revenues, but they disagreed on whether the transfer should be provided only in law (meaning it could continue to be changed at any time) or be made permanent by being written into the constitution.

## **1994-1999: Much Talk, Little Action**

### **1994**

In 1994 the House passed a wide-ranging transportation funding package that included indexing of the state gasoline tax to inflation and a constitutional amendment that would have dedicated at least 40 percent of MVST revenues exclusively to transit assistance. In the same session the Senate passed its own finance bill that also included gas tax indexing but dedicated only 23 percent of MVST revenues to transit, with the dedication in statute rather than in the constitution. The two sides could not come together on a common plan and no action was taken.

### **1996**

Two years later the House passed not one but two proposals for MVST dedication. One would have dedicated 30 percent of the revenue exclusively for transit, first as a statutory dedication and eventually as a constitutional one. This proposal was part of an overall transportation finance bill that also would have raised the gasoline tax by 5 cents. An unrelated proposal (added to the omnibus tax bill) would have restored the original 1981 timetable for transferring MVST revenue to highways and transit at the rate of 25 percent per biennium, beginning in the 1998-99 biennium. The Senate could not be persuaded to accept either proposal and another biennium went by with no action.

### **1998**

In 1998 the Senate reversed course and passed a bill proposing a constitutional amendment to dedicate 25 percent of MVST revenues to a new multi-modal surface transportation fund. The bill was never heard in the House.

Instead, the House went off in an entirely different direction with a bill to create a new "Minnesota ISTE Fund." This would have consisted of all of the revenue from motor vehicle license taxes, plus 20 percent of MVST. After guaranteeing local governments their existing share of license tax revenues it would have distributed the remainder of the fund to provide the state and local match for all federal transportation funds coming to Minnesota. The bill passed the House Transportation Committee but died in the Taxes Committee.

## 2000: The MVST Transfer Revived

In the 2000 session the legislature acted for the first time in a decade to dedicate MVST funds for transportation. But in another indication that the longstanding deadlock over transportation funding still had not been resolved, the transfer was made for reasons having nothing to do with increased spending for either transit or highways.

As part of the 2000 omnibus tax bill, the legislature adopted a modified version of Gov. Jesse Ventura's proposal to make substantial reductions in Minnesota's license taxes on automobiles, capping those taxes at \$189 in the second year of vehicle life and \$99 in subsequent years. Since the revenue from these taxes goes into the highway user tax distribution fund, the tax reduction left a considerable hole in that fund.

The legislature chose to fill that hole by transferring money directly from the general fund to the highway user fund—\$149 million in fiscal year 2001 and \$166 million in fiscal year 2002. For fiscal year 2003 and after, the tax bill replaced a direct transfer from the general fund to the highway user fund with a dedication of 32 percent of MVST to the highway user fund.

## 2001: Transfer Increased

The 2001 Legislature increased the transfer of MVST revenues out of the general fund, beginning in fiscal year 2003. But only a small part of this transfer was meant to increase transportation spending, and as in 2000, the bulk of the transfer went to tax relief.

MVST Transfer FY 2002 and Beyond			
	Fiscal Year		
	2002	2003	2004 and after
Highway user tax distribution fund (to replace revenue from vehicle license taxes)	30.86%	32%	32%
Metropolitan area transit fund (to replace metro-area transit property taxes)	0	20.5	20.5
Greater Minnesota transit fund (to replace greater Minnesota transit property taxes)	0	1.25	1.25
Metropolitan area transit appropriation account (for metro-area transit operations)	0	0	2
General fund	69.14	46.25	44.25

House Research Department

The money going to the metropolitan and greater Minnesota transit funds beginning in fiscal 2003 was intended to reimburse local governments and the Metropolitan Council for revenue lost when the legislature prohibited the use of property taxes for metropolitan transit operations. The

metropolitan area transit appropriations account was intended to be used for new transit operating costs such as those for the Hiawatha Avenue light rail transit corridor.

The share of MVST revenues going to the highway user fund to replace lost vehicle license tax revenue remained approximately the same, but the transfer was changed from a cash amount to a percentage.

### 2003: Moving Money Around

In the 2003 session the legislature made another significant change in the MVST distribution by increasing the percentages going to dedicated transit funds.

The increase in the transit funds' shares of MVST was intended not just to replace property tax revenue but also to make up for other transit revenue that was being lost. Overall budget cuts resulted in a reduction in general fund appropriations for both metropolitan and greater Minnesota transit assistance, as well as in the elimination of the 2 percent of MVST that would have gone into a metropolitan transit appropriations account beginning in fiscal year 2004. To make up for these cuts and to provide the state's share of operating costs for the Hiawatha light rail transit line, the legislature increased the transit funds' share of MVST.

Since the state's budget situation precluded taking the additional money from the general fund's share of MVST, the money was taken from the MVST share going to the trunk highway fund.

<b>MVST Dedication FY 2004 and beyond</b>		
	<b>2004-07</b>	<b>2008 and after</b>
Highway user tax distribution fund (HUTDF)	30%	32%
County state-aid highway fund	0.65	0
Municipal state-aid highway fund	0.17	0
Metropolitan Transit Fund	21.5	20.5
Greater MN Transit Fund	1.43	1.25
General Fund	46.25	46.25

House Research Department

The share of MVST going to the highway user tax distribution fund for state, county, and city streets and highways will be reduced from 32 percent to 30 percent until the end of fiscal year 2007. This loss will come entirely at the expense of the state trunk highway fund, since the percentages going to the county and municipal state-aid funds are intended to keep them from suffering any reduction in their total revenue from MVST.

*For more information about transportation funding, visit the transportation area of our web site, [www.house.mn/hrd/issinfo/trans.htm](http://www.house.mn/hrd/issinfo/trans.htm).*

## The Motor Vehicle Sales Tax Transfer: Current Law

After a nearly ten-year hiatus, the legislature in 2000 again began dedicating revenues from the motor vehicle sales tax (MVST) to transportation-related purposes. A constitutional amendment proposed by the legislature in 2005 would, if adopted, eventually result in 100 percent of MVST revenues going to transportation.

***What is MVST?***

The motor vehicle sales tax, or MVST, is the 6.5 percent sales tax applied to the sale of new and used motor vehicles.

***How MVST revenue used to be dedicated***

During the 1980s, the legislature dedicated MVST revenue to highways and transit, intending that the money supplement other spending for those purposes. This dedication was periodically changed or suspended, and it was abolished entirely beginning in fiscal year 1992.

***How MVST revenue is now dedicated***

Beginning in fiscal year 2000, the legislature restored the MVST transfer to dedicated transportation funds, not to augment spending but provide tax relief. In 2000, the legislature put limits on license taxes for passenger cars. Since those taxes go to the highway user tax distribution fund (HUTDF) and are dedicated exclusively to highways, some means had to be found to make up the loss to highway revenue. The legislature made up the losses to dedicated highway funds from reduction of automobile license taxes, and for losses to transit systems of revenue formerly coming from property taxes.

In the 2003 session, the legislature made another significant change in the MVST distribution by increasing the percentage to dedicated transit funds at the expense of the share for dedicated highway funds. The transit funds' shares were intended not just to replace property tax revenue but also to make up for budget cuts in general fund appropriations for transit assistance. This allocation is intended to be in effect through fiscal year 2007.

The distribution of MVST revenue is now as follows:

- 30 percent to HUTDF, the fund dedicated exclusively to state and local highways. By constitutional dedication this money is further divided among the state trunk highway fund, the county state-aid highway fund, and the municipal state-aid street fund.
- 0.65 percent directly to the county state-aid highway fund, in addition to its share of the 30 percent above
- 0.17 percent directly to the municipal state-aid street fund, in addition to its share of the 30 percent above
- 21.5 percent to the Metropolitan Council to replace revenue lost when the

- legislature abolished the council's property tax levy for transit
- 1.43 percent to the Department of Transportation for greater Minnesota transit assistance to replace revenue lost when the legislature prohibited using property taxes to subsidize greater Minnesota transit operating costs
- Beginning in fiscal year 2004, 2 percent additional to be appropriated by law for transit in the metropolitan area
- The remainder to the state general fund

The additional revenue for transit was spent for the 2004-05 biennium to partially make up for reductions in appropriations for metropolitan and greater Minnesota bus service and partly to reduce the local responsibility for Hiawatha light rail transit operating costs. This revenue was made available by effectively reducing the state trunk highway fund's share of MVST revenue from 18.8 percent to 17.7 percent, while leaving the share of MVST revenue going to local state-aid funds unchanged.

<b>MVST Dedication</b>				
	<b>2002</b>	<b>2003</b>	<b>2004-07</b>	<b>2008 and after</b>
Highway user tax distribution fund (HUTDF)	30.86%	32%	30%	32%
County state-aid highway fund	0%	0%	.65%	0%
Municipal state-aid highway fund	0%	0%	.17%	0%
Metropolitan transit fund	0%	20.5%	21.5%	20.5%
Greater Minnesota transit fund	0%	1.25%	1.43%	1.25%
General fund	69.14%	46.25%	46.25%	46.25%

***How MVST  
dedication may  
change***

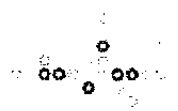
The 2005 Legislature passed a transportation appropriations bill that contained numerous funding initiatives, including a proposed constitutional amendment that would gradually dedicate all MVST revenue to transportation by 2012. Governor Pawlenty vetoed the bill but the constitutional amendment will still go before the people in the 2006 election, since constitutional amendments do not require the governor's approval. However, the 2006 Legislature could modify or withdraw the amendment.

The proposed amendment provides that beginning in fiscal year 2008, 63.75 percent of MVST revenues would be dedicated to transportation, with the remainder going to the general fund. The transportation percentage would rise 10 percent each year until reaching 100 percent in 2012. These percentages would override the allocation of MVST revenues in current law.

Of the transportation share, not more than 60 percent would go to the HUTDF and not less than 40 percent to public transit assistance. The actual percentages within these limits would be determined by the legislature.

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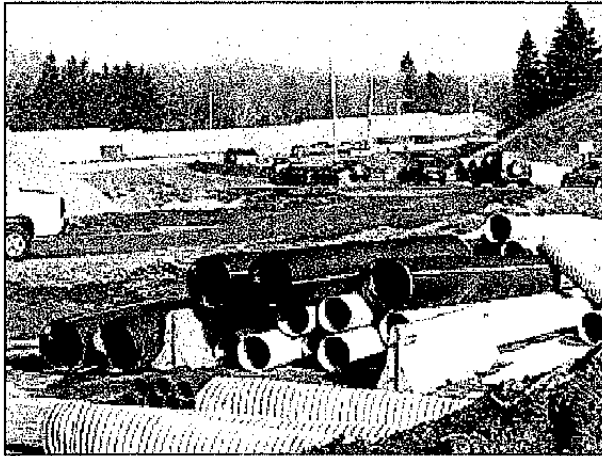


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## Confusion about MVST ballot question fuels funding debate at Capitol

by Dan Olson, Minnesota Public Radio  
March 30, 2006



Road construction at the I-494 reconstruction between Highway 5 and I-394. (MPR Photo/Dan Olson)

**Transportation advocates are worried they're confusing Minnesota voters with language they will face this November on the state's general election ballot. Voters will be asked to vote, 'yes' or 'no', do we want to approve a constitutional amendment which dedicates all of the tax collected on the sale of motor vehicles to transportation? Nearly half of what's called MVST, the motor vehicle excise sales tax, currently goes to other uses.**

St. Paul, Minn. — There are at least two sets of worriers.

Granite Falls Mayor Dave Smiglewski is from one group. He worries about two phrases in the ballot language, 'no less than' and 'no more than'.

Voters will be asked to decide if 100 percent of the MVST revenue, about \$558 million this year, should eventually go to transportation. Right now just under half goes to the general fund for other uses.

But that's not the ballot language lawmakers approved last session.

Their language puts the question to voters this way: "Do you approve amending the state constitution to allow no more than 60 percent of MVST revenue to go to roads and bridges and no less than 40 percent to transit."

Dave Smiglewski says the wording is confusing.

"When you say at least 40 that's saying, 'no less than,' and when you say 'no more,' than 60 percent for

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highways, that's saying at the most that's 60," he says. "And when I explain that to people and talk to them they have a very, very skeptical look on their faces when they hear about that, because what they're hearing is, 'Yeah there's going to be more money, but you know what it could well be that most of it goes to transit.'"

**Do you approve amending the state constitution to allow no more than 60 percent of MVST revenue to go to roads and bridges and no less than 40 percent to transit?**

*Transportation amendment before voters in November*

"That's foolishness," says Rep. Ron Erhardt, R-Edina. Erhardt says that's not how the system works.

Erhardt, who chairs the House Transportation Policy Committee says, everyone knows the road and bridge interests will get their share of the money.

"The legislature still has to vote and appropriate that money and that's certainly not going to switch everything to transit," he says.

In fact the opposite has been the case. Rural Minnesota continues to get roughly half of the state's transportation funds.

Lea Schuster, the director of Transit for Livable Communities, a St. Paul-based advocacy group says lawmakers continue to chip away at money for transit.

"Transit has steadily been losing money at the Legislature for the last years. We've had transit cuts and fare increases," she says.

One proposal now before lawmakers would change the MVST ballot question language to specify 60 percent for roads and 40 percent for transit as a hard and fast formula.

Rep. Erhardt blames the tempest on lobbyists who are looking for business and who are fanning the flames of worry of outstate officials. Those officials have formed a group called the Coalition of Greater Minnesota Cities.

Now for the second worry.

Some lawmakers claim they are hearing from constituents the ballot language makes it sound like they're being asked to approve a new tax when in fact the question is about how to spend an existing tax.



*Q Road closed*

Everyone's nervousness boils down to concern over having more money.

Transit advocate Lea Schuster believes the language is clear and any driver who hits a pothole or rider who waits for a bus will understand what's at stake.

"Once Minnesotans understand this will provide a steady, stable funding source for transit that will be stable in a way that roads currently are and in addition, will add more money for roads, that's a win-win across the state, whether you live in the

metro area or greater Minnesota," she says.

Voter approval to spend all the MVST revenue on transportation could mean as much as half a billion dollars more for state transportation projects by 2011.

So the prospect of MVST money has energized transportation advocates. But they're concern is voter approval of constitutional amendments, which is relatively rare.

Part of the reason is Minnesota's voting system. The proposed MVST change requires a simple majority. However voters who don't mark the ballot question are counted as a no vote.

As result, Minnesota voters who don't understand the MVEST question and who don't mark the ballot question end up being counted as opponents of the change.

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Page#: 4B

### Legislators take a crack at clearer language

**A House panel rewrites the ballot question for a proposed constitutional amendment dedicating all vehicle tax revenues to roads and transit.**

By Laurie Blake

Staff Writer

Worried that voters would be confused, legislators moved Tuesday to simplify a question on the November ballot that asks voters to change the state Constitution to dedicate all of the state vehicle tax revenue for roads and transit.

Legislators also took a step to spell out an exact formula for spending the vehicle tax revenue: 60 percent for highways and 40 percent for transit.

The money is the linchpin in Gov. Tim Pawlenty's plan to borrow \$2.5 billion to pay for overdue highway projects.

The House and Senate agreed last year to put a ballot question before voters in November asking if they want to channel all vehicle sales tax revenues to transportation - up from 54 percent now.

Since then, many lawmakers have worried that vague wording of the ballot question might doom it to failure. When Attorney General Mike Hatch's office advised the legislators that they may not change the wording of a proposed constitutional amendment, now that it has been approved by both houses, a House committee on Tuesday opted instead to try to change the wording of the ballot question.

The provision passed by the House Transportation Finance Committee also spelled out the 40/60 percent spending breakdown for the tax revenue.

The ballot question currently reads as follows: "Shall the Minnesota Constitution be amended to dedicate revenue from a tax on the sale of new and used motor vehicles over a five year period, so that after June 30, 2011, all of the revenue is dedicated at least 40 percent for public transit assistance and not more than 60 percent for highway purposes?"

The House measure, which still requires a full House vote, would take all the figures out and ask simply:

"Shall the Minnesota Constitution be amended so that after June 30, 2011, all of the

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revenues from the existing tax on the sale of new and used motor vehicles are dedicated to highways and public transit?"

Laurie Blake - 612-673-1711

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**Constitution amendment needs spin, supporters say**  
**A coalition of 700 groups begins a campaign to explain the ballot measure.**

By Laurie Blake

Staff Writer

A statewide effort to motivate Minnesotans to change the state Constitution started Wednesday with a big handicap: the wording of the proposed change confuses people.

In the November election, voters will have the chance to guarantee that roads and transit get every cent of the money collected from the state's existing motor vehicle sales tax. It will happen if voters approve a proposed constitutional amendment to dedicate those funds.

By 2011, the change would channel an extra \$300 million a year to roads, bridges, buses and rail transit - without raising taxes.

But the ballot question voters will see is worded with such complexity that "a lot of people look at it and assume it's a tax increase," said John Himle, a public relations expert working on the campaign.

On Wednesday, a group of 700 businesses and organizations known as Minnesotans for Better Roads and Transit started a \$4 million media campaign to erase that misconception and win votes for what it is calling "Minnesota's Transportation Amendment."

The pro-amendment campaign, starting with billboards and radio ads, has been joined by a long list of supporters, including: automobile clubs, truck associations, road builders, businesses big and small, environmental groups and the Minnesota Chamber of Commerce.

"Transportation in Minnesota is clearly falling behind," said Jon Campbell, CEO of Wells Fargo bank and co-chair of the campaign. "It's time to make a much stronger investment in roads and transit."

Early opinion polling finds that spending more on transportation appeals to drivers impatient for road improvements, environmentalists eager for more transit and businesses with goods to move, Himle said.

Proponents want people to make up their minds in favor of the amendment before they

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face the language in the voting booth.

State legislators attempted to reword the language during the just-ended session, but they failed to pass a transportation bill. With the bill died Gov. Tim Pawlenty's plan to borrow \$2.5 billion for roads and to use the money provided by the constitutional change to pay off much of the debt.

Currently, 54 percent of the vehicle sales tax revenue is spent on roads and transit and the remainder goes to the state's general fund. If voters decide to dedicate 100 percent, more roads would be built and metro and suburban transit systems would add 15 express bus routes and 13 local routes and expand frequency on 70 existing routes.

Channeling the money to transportation would leave less money in the state's general fund for education and other programs.

For additional information on the campaign go to [www.voteyesmn.org](http://www.voteyesmn.org).

Laurie Blake is at 612-673-1711

ANY QUESTIONS?

Here is the wording to a ballot question voters will confront in November:

"Shall the Minnesota Constitution be amended to dedicate revenue from a tax on the sale of new and used motor vehicles over a five year period, so that after June 30, 2011, all of the revenue is dedicated **at least 40 percent for public transit** assistance and not more than 60 percent for highway purposes?"

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Last update: September 20, 2006 – 10:29 PM

## Minnesota Poll: Most say more funds for roads

Ballot wording might sound confusing, but a yes vote would mean more for roads and transit.

**Laurie Blake**, Star Tribune

Voters like the idea of changing the state constitution to channel more money to roads and transit, but support is hampered by the confusing language that will appear on the ballot, the Minnesota Poll finds.

The November ballot will put a 55-word question before voters, asking them to direct all proceeds from the existing vehicle sales tax to transportation. That would send an estimated \$300 million more per year for new bridges, highways and transit.

In a sample of about 400 likely voters taken last week, 47 percent said they would vote for the measure, as it will appear on the ballot, and 29 percent opposed it. Support jumped to 59 percent and opposition dropped to 17 percent when approximately the same number of voters were read a simplified version of the proposed constitutional amendment.

So how much support is really out there? By combining the two questions, 53 percent support it. But researchers say that it's difficult to tell with such a complicated ballot question.

Confusion over the ballot question is particularly worrisome to amendment backers, because changing the Constitution requires approval of a majority of all those voting in the election -- not just those voting on the Constitutional question. Any voter who doesn't respond to the amendment question will in effect be voting against it.

A spokeswoman for the Vote Yes For Better Roads and Transit campaign, a \$4 million effort to get the amendment passed, acknowledges that the language is an issue.

"When you explain this to people, it's common sense that transportation user fees should be used for transportation," said Margaret Donahoe, a leader of the campaign. "Obviously our roads and transit systems need more money and the majority of people agree with that."

Using all existing vehicle sales tax revenue for roads and transit appeals to many voters.

Rebecca Grundhoefer of Foley said it's clear to her that roads are hurting. "I live out in the country and very frequently we see roads that are broken up and eroded," she said. "There have been very large sink holes that have closed the road that we live on. I would think that devoting more money would help."

Orin Paulson of Minnetonka also favors the amendment. "I think we need to put more money into roads, and I am 100 percent in favor of more transit. We should be putting it into light rail but we are so far behind, we at least got to keep the roads up."

Kurt Templin of Plymouth is not convinced. Templin said he will vote against the amendment even though he knows that roads and transit need more money because taking it out of the general fund will open another can of worms. "I hate being against it, but it's a shell game. How are we going to account for what's missing from the general fund? "

Currently, 53 percent of the taxes collected on car and truck sales are spent on transportation. Legislators put the rest into the general fund for education, health care and other needs.

Gov. Tim Pawlenty and legislators asked voters to amend the constitution because they can't agree on any other way to raise more money for transportation. Legislators tried to raise the gas tax last year; Pawlenty vetoed it.

The proposed constitutional amendment was all that remained after the face-off. As the product of 11th-hour lawmaking, it was hastily and poorly worded. But it would force legislators to put all of the vehicle sales tax revenue into roads and transit.

Amendment promoters say the gradual transfer of the funds over five years would allow time for growth in other tax revenues to cover the hole in the general fund.

The latest Minnesota Poll found that men and women have similar attitudes about the amendment. So do Republicans and DFLers. Attitudes also are about the same across age and income levels. But middle-income voters are more likely to vote in favor of the amendment than those at the top and bottom of the earnings scale.

Much of the organized opposition to the amendment comes from outstate Minnesota groups, including the Minnesota Farm Bureau, Minnesota Farmers Union and the Coalition of Greater Minnesota Cities (a nonprofit advocacy group of 59 cities outside the metro area). They say that the wording of the amendment sending "at least 40 percent" of the new money to transit and "not more than 60 percent for roads" is so vague it really doesn't guarantee money for roads.

Holly Biron, transportation lobbyist for Greater Minnesota Cities, questions whether those who back the amendment realize that. She also said they may not understand that channeling more money to transportation would mean less for education, health care and property tax relief.

The poll results find support for the amendment about the same in outstate Minnesota as in the metro area.

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Wayne Anderson of Little Falls said he's all for the amendment "providing it doesn't all end up in the metro area." Although some voters question why it's necessary to change the constitution to change state spending habits, Anderson said he would like to see a constitutional provision that makes transportation spending a clear priority.

"That prevents the Legislature from doing things with it that people don't want done," he said.

Laurie Blake • 612-673-1711 • [lblake@startribune.com](mailto:lblake@startribune.com)  
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Last update: September 20, 2006 – 8:42 PM

## Confusing ballot language

	<b>No</b>
<b>For Against</b>	
	<b>opinion</b>

**Here's the actual ballot wording**

"If the election were held today, would you vote for or against an amendment to the Minnesota constitution that would dedicate revenue from a tax on the sale of new and used motor vehicles over a five-year period, so that after June 30, 2011, all of the revenue is dedicated at least 40 percent for public transit

47%29% 24%

assistance, and not more than 60 percent for highway purposes?"

**But what happens when its explained this way, in plain language?**

"If the election were held today, would you vote for or against an amendment to the Minnesota constitution that would dedicate all revenue from existing sales taxes on motor vehicles to transportation beginning in the year 2011, with at least two-fifths going to public transit and the rest going to highways?"

59%17% 24%

**Averaging results of the two questions**  
Legislators admit that the language used for the transportation amendment is confusing.

53%23% 24%

How confusing is it? The Minnesota Poll tested two versions of the ballot. About half of the respondents in the poll were chosen at random to hear the actual ballot wording, and slightly less than half supported the amendment. The results were far different for the other random half, which were asked about the support using plainer language: Nearly three in five supported the amendment in this version. It also became clear that many voters have not decided which way to go, because in both versions about a quarter had no opinion about it.

Source: Star Tribune Minnesota Poll of 820 likely voters statewide by telephone Sept. 13-15. Margin of sampling error: No greater than 3.4 percentage points at a 95 percent confidence level. For more information about the poll, see [StarTribune.com/poll](http://www.startribune.com/poll).

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## Transportation-funding amendment is clear as mud

• Wording on the ballot will be confusing; what it would do is constitutionally protect revenue meant for roads and transit.

By LAURIE BLAKE • lblake@startribune.com

Legislators did not expect that such a confusing question would ever end up on the November ballot.

But since the Legislature didn't take action to simplify it, millions of voters will confront a 55-word sentence asking them in a roundabout way to change the state Constitution to send more money to roads and transit.

Opinion surveys suggest people like the idea. But the question, hastily added to a bill last year, has to appear exactly as legislators wrote it. The proposal is so difficult to read that supporters are spending a lot of time explaining what it means.

"Once you go over the language with people, they get it, but they wor-

ry that other people won't get it," said Margaret Donahoe of the Minnesota Transportation Alliance. Her group is promoting the amendment as part of a statewide "Vote Yes" campaign.

Passage of the amendment would provide \$300 million more each year for roads and transit by channeling all of the tax money collected on the sale of vehicles to transportation.

Fifty-four percent of the money already goes to transportation, and legislators have the authority to use the rest for that purpose. But they want voters to put that policy into the Constitution so legislators will never again use the money to balance the budget.

**Amendment continues:** Changing the Constitution is an uphill climb. **B5 ►**

# On the ballot, issue will be clear as mud

## 4 AMENDMENT FROM B1

Even with easy-to-read language, changing the Constitution is an uphill climb. Approval requires a majority of all those voting in the election — not just those who vote on the amendment. Over the years, 211 amendments have been put on the Minnesota ballot. Voters have approved 118.

Mary Jane Morrison, a law professor at Hamline University and an expert on the Minnesota Constitution, said the wording of the transportation funding question might make it harder to pass.

"It stands to reason the easier something is to understand, the more people will be likely to vote for it and the more comprehensible it is, the less likely," Morrison said.

### Political games

The proposed amendment sneaked through the legislative process in the final hours of the 2005 session when legislators tacked it on to a large transportation bill that included a gas-tax increase.

Knowing that Gov. Tim Pawlenty would veto a gas-tax increase, legislators approved the bill hastily to make a political point that they disagreed with the governor.

The proposal to amend

### WORD FOR WORD

The language voters will see on the ballot Nov. 7:

*"Shall the Minnesota Constitution be amended to dedicate revenue from a tax on the sale of new and used motor vehicles over a five-year period, so that after June 30, 2011, all of the revenue is dedicated at least 40 percent for public transit assistance and not more than 60 percent for highway purposes?"*

Revised language the Legislature considered but failed to adopt:

*"Shall the Minnesota Constitution be amended so that after June 30, 2011, all of the revenues from the existing tax on the sale of new and used motor vehicles are dedicated to highways and public transit?"*

the Constitution was just one of many ways the larger bill would have raised new money for transportation. It came as a surprise to many when the constitutional question was the one element to survive Pawlenty's veto — because governors cannot veto a proposed constitutional amendment.

As a result, a poorly worded provision that was never opened to a public hearing or discussed in detail by legislators went right on the ballot, said Rep. Mary Liz Holberg, R-Lakeville. "Kinda scary. Hopefully, people have learned their lesson."

Holberg, who chairs the House Transportation Finance Committee, objects to the wording because it does not clearly explain how the money

would be split between roads and transit.

This spring, legislators considered rewording the ballot question to simplify it. But the new language was part of a larger transportation bill that went down to defeat.

### What would it do?

The strategy now for the coalition supporting the amendment is to key on what it would do.

"We are not focusing so much on the language, as on what the language is trying to accomplish," said David Olson, chairman of the Minnesota Chamber of Commerce.

"I say this is not a new tax, it's an existing tax," Olson said. "I explain that the original in-

tent when they created the tax in 1981 was to have it go to transportation projects, and that is what we are trying to make sure happens."

Promoting the amendment at the recent Olmsted County Fair, Richard Thomas of Ames Construction, a highway contractor, kept a copy of the ballot question in his pocket for anyone who wanted to see it. Most people weren't interested in that detail, he said.

"We would have preferred to have better language, but the average voter could care less," Ames said.

If the amendment passes, the Minnesota Department of Transportation would put its share toward a list of road projects waiting for funding. Metro Transit is counting on the money to expand existing bus service, build and operate the Central Corridor light-rail line, and pay operating costs for Northstar commuter rail and three new busways.

Marian Anderson, secretary of the Kiwanis Club of Faribault, said the recent Vote Yes presentation she heard at her group persuaded her to support. Yes, the language is confusing, Anderson said, but "I support anything we can do to improve our roads."

Laurie Blake • 612-673-1711

## Voters to choose: Transit or services?



RICHARD TSONG-TAATARI • rtsong-taatari@startribune.com

It was standing-room only as riders headed to downtown Minneapolis on the Hiawatha light rail during the morning rush hour this week. A top official of Southwest Metro Transit said that if Minnesota's transit-funding constitutional amendment doesn't pass, the already crowded system will suffer cuts.

● Needed road upgrades depend on passage of the transportation amendment, but critics say it will cost the general fund \$300 million.

By LAURIE BLAKE • lblake@startribune.com

With commuters flocking to buses across the metro area, and the Hiawatha light rail crammed with 1 million passengers last month, transit advocates say the public is demanding more ways to ride.

Planners have mapped out an ambitious network of new rail lines, bus routes and park-and-ride lots that could double ridership by 2020.

Those plans all hinge on the \$100 million or more per year that would flow to transit if voters approve a constitutional amendment Nov. 7. If voters reject the change, transit officials predict, service will be reduced, not expanded.

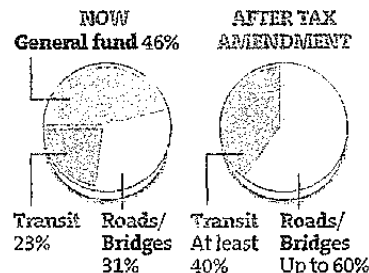
"If it doesn't happen, we know what the impacts are — and those are cuts," said Len Simich, chief executive officer of Southwest Metro Transit, serving Eden Prairie, Chaska and Chanhassen.

The proposed constitutional amendment would require that all revenue from the state's existing vehicle sales tax be spent only on roads and transit. Nearly half of that money, amounting to tens of millions of dollars, now goes into the general fund to balance the state budget.

Opponents say the amendment will create a \$300 million annual hole in the general fund, which pays for schools, health care and other priorities.

**Transit continues:** For advocates, amendment is a must-win. **ES ▶**

### WHERE THE MOTOR VEHICLE SALES TAX GOES



Source: Minnesotans for Better Roads and Transit

# Voters to choose: Transit or road services?

## TRANSIT FROM B1

Some worry that highways will be shortchanged because the amendment guarantees that "at least 40 percent" of the vehicle sales tax revenue would go to transit — and says only that not more than 60 percent would go to roads.

For transit advocates, the amendment is a must-win measure. It would give public transit the kind of dedicated revenue that roads have had in the gas tax for more than 50 years, said Barb Thoman of Transit for Livable Communities, a nonprofit group.

### What it would buy

The new money would help pay for the Northstar commuter rail line; the Central Corridor light rail between Minneapolis and St. Paul; three busways; 30 new bus routes, and 13 new and 11 expanded park-and-ride lots.

The Metropolitan Council, the metro area's transit planning agency, won't give specifics on what will happen if the amendment fails, saying it prefers to hope for the best. But council plans predict long-term transit budget deficits and service cuts are in store if voters don't approve the change. Funding for the Central Corridor, in particular, would be in doubt.

"This is a very serious time for transit," said Beverley Miller, director of Minnesota Valley Transit.

The popularity of public transit is rising in the Twin Cities and across the nation. This year, bus patronage is up 20 percent in Maple Grove, 13 percent in Eden Prairie, Chaska and Chanhassen and 10 percent in the southern suburbs. In August, Metro Transit reported the highest monthly total in 23 years.

Passing the amendment will be critical to keep ridership growing, Miller said.

"People are really engaged because of the price of gas, and once they find their way to transit most stay if you are able to provide the service," she said. The question she hears most often from riders is: "Why can't you add service? Don't you see that there are people standing?"

The constitutional question has been put before voters be-



Riders got off a Hiawatha Line train at the Government Plaza Station in downtown Minneapolis during the morning rush.

RICHARD TSONG-TAATARI • rtsong-taatarii@startribune.com

cause Gov. Tim Pawlenty and legislators have been unable to agree on another way to increase spending for transportation. Legislators passed a gas tax increase. Pawlenty vetoed it.

Advocates are counting on voters to make the connection between standing-room-only buses and the ballot question.

"The moment we pass this constitutional amendment, we have the local match to match hundreds of millions in federal money," said Rep. Alice Hausman, DFL-St. Paul.

But if that extra \$300 million a year goes to roads and transit instead of the state's general fund, that will leave less money for education, health care and other state needs.

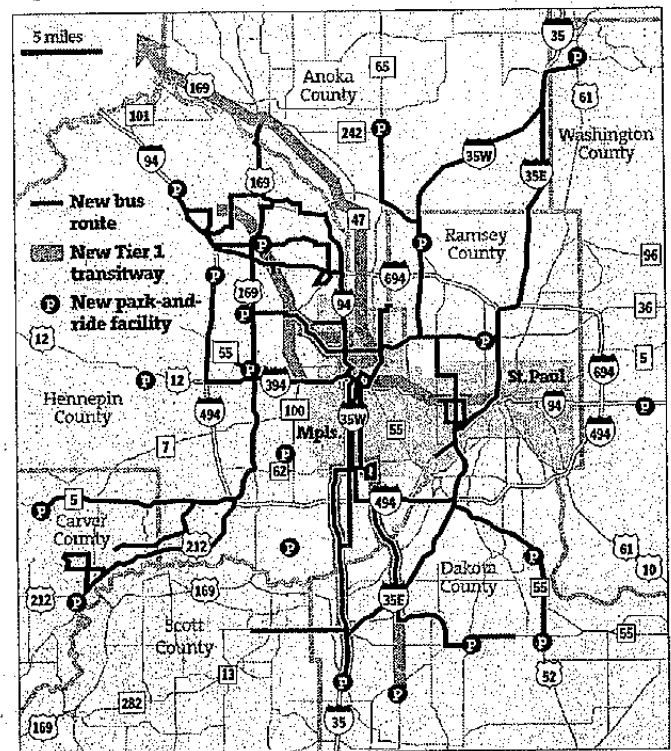
### Teachers union opposes it

That is why Education Minnesota, the statewide teachers union, opposes the amendment. "We absolutely believe that transportation is underfunded and that more needs to be done," said president Judy Schaubach. "But we are also seeing what is happening in education and health and human services, which are also struggling."

The product of last-minute lawmaking, the constitutional amendment is written in complex and confusing language that says "at least 40 percent" of the money would go to transit and "not more than 60 percent" would go to roads. Opponents say that leaves no minimum guarantee for roads.

## 2008-2020 POTENTIAL NEW TRANSIT SERVICES

If the constitutional amendment passes, the Metropolitan Council expects to pursue the improvements outlined in this map.



Source: Metropolitan Council

Star Tribune

"We are very concerned that with this proposal, a large amount could go to transit," said Chris Radatz, public policy director for the Minnesota Farm Bureau. Transit needs more money, but better highways and bridges are the Farm Bureau's first priority, he said.

The Civic Caucus, a non-partisan group that is joined by former Govs. Arne Carlson and Wendell Anderson, also urges

voters to reject the amendment, saying it won't provide enough money to meet public expectations.

"The amendment is unnecessary," the group said, because the governor and legislators could accomplish the same thing by passing laws.

Transit advocate John DeWitt said that is what makes passage of the amendment so important.

"It's very critical because of the failure of our Legislature and our governor to address the issue."



TAKE A RIDE WITH ROADGUY

APPENDIX PAGE 26

www.startribune.com/blogs/roadguy

Laurie Blake • 612-673-1711



## Ballot question would set aside money for roads and transit

by Dan Olson, Minnesota Public Radio  
September 28, 2006

**A constitutional question about transportation funding appears on the Minnesota ballot in November. You'll be asked whether you favor amending the state Constitution to require that all of the sales taxes collected on motor vehicles be spent on roads, bridges and transit.**

St. Paul, Minn. — Currently about half the revenue from the motor vehicle sales tax goes to transportation. The rest goes to the state's general fund. Surveys show Minnesotans favor the change. But a quirk in state voting law could defeat the idea.

If approved, the constitutional change would, for the first time, create a dedicated source of funding for transit. The ballot question asks voters if they approve spending not more than 60 percent of MVST (pronounced M vest) on roads and bridges, and not less than 40 percent on transit.

The constitutional change requires a simple majority to pass. However, constitutional changes are traditionally difficult to achieve, because if you don't vote on the question at all, it's counted as a "no" vote.

David Olson, president of the Minnesota Chamber of Commerce, says asking voters to bypass the legislature and amend the state Constitution is the only way he knows to inject new dollars into transportation projects.

"We've actually given up in the short term with the Legislature doing this, statutorily or through the normal political change," he says.

Olson and others who favor dedicating MVST to transportation have watched for years as lawmakers declined to raise the gas tax, the biggest source of revenue for road and bridge building.

Instead, lawmakers and the governor have voted to borrow money to finance a good share of the new spending on transportation.

**If we don't pay it out of our current incomes and monies, we're doing a disservice to the rest of our future voters.**

- John Reay,

Rep. Mark Buesgens, R-Jordan, opposes the amendment. Buesgens represents voters in a fast-growing Twin Cities southern suburb, and he thinks the ballot language gives lawmakers authority to direct all MVST revenue to transit -- or at least diminish the amount currently spent on roads.

"Do I believe that the 30 percent which currently goes to roads could diminish? Yeah, I do believe that could happen," Buesgens says.

A sampling of Twin Cities voters reveals a wide range of opinion on the issue.

*south  
Minneapolis  
resident*

Chris Strong, a social service agency worker who lives in east St. Paul, isn't sure how she'll vote on the question. However, she believes more money needs to be spent on the Twin Cities transportation system, especially transit. She doesn't see elected officials taking charge.

"I don't know that we have an alternative because people are not doing it voluntarily, or I don't see it coming voluntarily," Strong says.

John Reay, a computer programmer who lives in south Minneapolis, is also undecided on how he'll vote. He knows for sure he does not approve of the state's current strategy of borrowing to fund road and bridge construction.

"If we don't pay it out of our current incomes and monies, we're doing a disservice to the rest of our future voters," he says.

Reay supports raising Minnesota's gas tax. The 20-cent-per-gallon levy hasn't been increased since 1988, and experts say inflation has eaten away one-third of its buying power.

Minneapolis resident Robert Rossi, a chemist and an Independence Party activist, says he isn't sure how he'll vote on the amendment. He prefers lawmakers decide how to fund transportation. But he blames voters for not paying attention to the issue.

"It's very easy to say it's our leaders who are failing us. The truth of it is, it is the voters who are choosing from among the options that are put before them. And they're not choosing people that are solving these problems, so it comes to this kind of a band-aid on the issue," Rossi says.

Voter approval of the constitutional change directing all the MVST money to transportation would amount to around \$300 million a year when the change takes full effect by 2011.

Transportation advocates say much more, well over \$1 billion, is needed each year to repair and expand Minnesota's transportation system.

Why is the problem so big? There are many reasons. One is Minnesota has a more extensive road network than some other states. Many of the miles are aged and in need of repair or replacement.

Also, population growth in the Twin Cities is straining the metropolitan road system and highlighting the Twin Cities underdeveloped transit system.

Minnesota isn't alone. Rob Puentes, a transportation analyst at the Brookings Institution, says states all around the country are looking for ways to increase transportation funding without riling voters.

"Many are doing more borrowing than ever before in the form of issuing bonds. Some are trying to sell off their toll roads to private companies for short-term infusions of cash," says Puentes. "They're fighting with one another here in Washington for a bigger chunk of the federal dollar. In short, they're doing anything they can to avoid increasing taxes, tolls or fees."

Minnesota's transportation funding gridlock has prompted several Twin Cities area counties to impose local wheelage taxes. In addition, residents in nearly every county are paying higher property taxes to help cover transportation costs.

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MIKE HATCH  
ATTORNEY GENERAL

# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

SUITE 1800  
445 MINNESOTA STREET  
ST. PAUL, MN 55101-2134  
TELEPHONE: (651) 297-2040

July 3, 2006

Mary Kiffmeyer  
Secretary of State  
State Office Building, #180  
100 Dr. Rev. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155-1299



Re: Minnesota Session Laws 2005 - Chapter 88

Dear Secretary Kiffmeyer:

Pursuant to Minn. Stat. § 3.21 you are hereby furnished with a statement of the purpose and effect of a proposed amendment to the Constitution of the State of Minnesota, which will be presented for voter approval at the state general election on November 7, 2006.

By Chapter 88, 2005, Minn. Laws 459, the legislature has proposed to amend Article XIV of the State of Minnesota Constitution by adding two new sections. If adopted, the new sections will read as follows:

Sec. 12. Beginning with the fiscal year starting July 1, 2007, 63.75 percent of the revenue from a tax imposed by the state on the sale of a new or used motor vehicle must be apportioned for the transportation purposes described in section 13, then the revenue apportioned for transportation purposes must be increased by ten percent for each subsequent fiscal year through June 30, 2011, and then the revenue must be apportioned 100 percent for transportation purposes after June 30, 2011.

Sec. 13. The revenue apportioned in section 12 must be allocated for the following transportation purposes: not more than 60 percent must be deposited in the highway user tax distribution fund, and not less than 40 percent must be deposited in a fund dedicated solely to public transit assistance as defined by law.

The purpose of the amendment is to dedicate proceeds of state taxes on the sale of motor vehicles for transportation purposes and to provide for allocation of the amounts so dedicated between the highway user tax distribution fund established by Minn. Const. art. XIV, § 5, and a fund to be used for local transit assistance.

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The effect of the amendment will be that, beginning with the fiscal year commencing July 1, 2007, 63.75 percent of the proceeds of state motor vehicle sales taxes must be apportioned for transportation purposes. Thereafter, the revenue so apportioned must be increased by ten percent each subsequent fiscal year until June 30, 2011. After June 30, 2011, 100 percent of the revenues must be apportioned for transportation purposes. The amounts so apportioned must be allocated between the local transit assistance fund and the highway tax distributing fund, with at least 40 percent going to the local transit assistance fund.

Very truly yours,

A handwritten signature in black ink, reading "Christie B. Eller". The signature is written in a cursive style with a large, stylized "C" and "E".

CHRISTIE B. ELLER  
Assistant Attorney General  
Manager, Public Finance/Opinions Division

(651) 296-9421 (Voice)  
(651) 297-1235 (Fax)

AG: #1634206-v1

**GOVERNOR: LEGISLATION: CONSTITUTIONAL AMENDMENTS:** Amendments proposed by legislative action are not subject to gubernatorial approval or veto. Minn. Const. art. IV, §§ 23, 24; art. IX, §1.

213-C  
(Cr. Ref. 86-a)

MARCH 9, 1994

The Honorable Arne H. Carlson  
Room 130 Capitol Bldg.  
75 Constitution Ave.  
St. Paul, MN 55104

Dear Governor Carlson:

In your letter to our office you ask substantially the following questions:

**QUESTION 1.**

Must proposed amendments to the Minnesota Constitution be presented to the governor for signature or veto?

**OPINION**

We answer your question in the negative. Minn. Const. art. IX, § 1 provides:

A majority of the members elected to each house of the legislature may propose amendments to this constitution. Proposed amendments shall be published with the laws passed at the same session and submitted to the people for their approval or rejection at a general election. If a majority of all the electors voting at the election vote to ratify an amendment, it becomes a part of this constitution. If two or more amendments are submitted at the same time, voters shall vote for or against each separately.

The plain wording of this section indicates that amendments may be proposed by "a majority of the members elected to each house" and submitted to the "people" for approval. This provision makes no mention of the governor. However, as you note, Minn. Const. art. IV, § 23 provides in part:

Every bill passed in conformity to the rules of each house and the joint rules of the two houses shall be presented to the governor. If he approves a bill, he shall sign it, deposit it in the office of the secretary of state and notify the house in which it originated of that fact. If he vetoes a bill, he shall return it with his objections to the house in which it originated. His objections shall be entered in the journal. . . . Any bill not returned by the governor within three days (Sundays excepted) after it is presented to him becomes a law as if he had signed it, unless the legislature by adjournment within that time prevents its return. Any bill passed during the last three days of a session may be presented to the governor during the three days following the day of final adjournment and becomes law if the governor signs and deposits it in the office of the secretary of state within 14 days after the adjournment of the legislature. Any bill passed during the last three days of the session which is not signed and deposited within 14 days after adjournment does not become a law.

If a bill presented to the governor contains several items of appropriation of money, he may veto one or more of the items while approving the bill.

Section 24 provides:

Each order, resolution or vote requiring the concurrence of the two houses except such as relate to the business or adjournment of the legislature shall be presented to the governor and is subject to his veto as prescribed in case of a bill.

You are concerned with the issue of whether one or both of these "presentment" clauses applies so as to require that proposed constitutional amendments per se be presented to the governor and subjected to gubernatorial approval or veto. While we are not aware of any Minnesota court case directly on point, our office has previously considered the question and concluded that proposed constitutional amendments are not subject to approval or veto by the governor. See, e.g., Ops. Atty. Gen. 86a November 12, 1946; 213-c, April 1, 1922, and March 10, 1947 (copies attached). As pointed out in the 1946 opinion, the U.S. Supreme Court in 1878 determined that constitutional amendments proposed by Congress are not subject to presidential veto, despite language of Article I, Section 7 in the U.S. Constitution which is similar to that contained in Article IV, Sections 23 and 24 of the Minnesota Constitution quoted above. Rather "the negative of the president applies only to ordinary cases of legislation; he has nothing to do with the proposition or adoption of amendments to the Constitution." See Hollingsworth v. Virginia, 3 U.S. (3 Dall.) 378, 380 (1798), See also Consumer Energy Council of America, v. F.E.R.C., 673 F.2d 425 (D.C. Cir. 1982). The majority of authorities in other states also appear to conclude that presentment language such as that contained in our constitution does not apply to constitutional amendments proposed by the legislature for approval by vote of the people. See, e.g., Opinion of the Justices, 261 A.2d 53 (Me. 1970); Op. (Arkansas) Atty. Gen. 93-068, March 19, 1993; Op. (Nebraska) Atty. Gen. 87072, May 12, 1987; Op. (Pennsylvania) Ag. 84-3, December 28, 1984.

There is a case to the contrary in which the Supreme Court of Montana held presentment language similar to that in our constitution to be unambiguous and mandatory; subject only to the exceptions contained in the presentment section for such things as adjournment and internal business matters of the two houses. Consequently, the court invalidated a purported amendment proposal which had not been presented to the governor. As noted above, however, that result appears to be in the minority. Furthermore, in an analogous situation, our Supreme Court declined to hold the presentment language unambiguous and all-inclusive. In State ex rel. Gardner v. Holm, 241 Minn. 125, 62 N.W.2d 52 (1954) the court held that action of the "legislature" in fixing judicial salaries in accordance with Article VI, Section 6 of the Minnesota Constitution, was not subject to approval or veto by the governor. While acknowledging the broad implications of the presentment provisions of the constitution, the court concluded nonetheless:

[I]t is clear that not all acts of the legislature must be submitted to the governor. As an example, regents of the University of Minnesota are appointed pursuant to R.S.1851, c. 28. State ex rel. Peterson v. Quinlivan, 198 Minn. 65, 268 N.W. 858. The selection of regents must be made by the vote of the joint session of the legislature, but the governor has no control over such selection.

It is also clear that there is a vital distinction between the exercise of the lawmaking function and the exercise of those other functions delegated to the legislature which are not strictly speaking lawmaking.

That the framers of our constitution did not intend to grant to the governor a veto over all acts of the legislature is apparent from an examination of art. 5, § 4, dealing with the powers and duties of the governor. With respect to the veto power, this section reads:

"\* \* \* He [the governor] shall have a negative upon all laws passed by the legislature, under such rules and limitations as are in this Constitution prescribed." (Italics supplied.)

Implicit in this language is an exception in those cases where the constitution itself provides that the legislature, quite aside from the exercise of the lawmaking function, shall act without the concurrence of the governor. That, it appears to us, is the situation here.

Id. at 62 N.W. 2d at 56-57.

We believe that similar reasoning would be applied in the case of proposed constitutional amendments. For the foregoing reasons, we conclude that proposed amendments to the constitution are not required, as a matter of law, to be presented to the governor nor are they subject to his approval or veto.

## **QUESTION II**

In the case of a proposed constitutional amendment which is part of a larger bill containing statutory changes and/or appropriations what is the effect of a governor's veto of that bill.

## **OPINION**

In our opinion, a veto of a bill containing a proposed constitutional amendment together with matters of ordinary legislation would be effective as to the legislation contained in the bill and the provisions so vetoed would not become law unless the veto were overridden. However, as noted in response to Question I above, the veto would not affect the proposed constitutional amendment which must be voted upon at the next general election in accordance with Minn. Const. art. IX, § 1 and Minn. Stat. § 3.20 (1992).

In Wass v. Anderson, 312 Minn. 394, 252 N.W.2d, 131 (1977), our Supreme Court addressed a claim that a proposal for a constitutional amendment was a "subject" in and of itself and thus could not be contained in a bill with other legislative action without violating the "single subject" rule. There the court said:

Plaintiffs concede that the constitution imposes no requirement as to the form a proposed constitutional amendment must take. That it might be preferable for the legislature to propose amendments separately rather than to include them in bills containing other provisions is a matter addressed to legislative discretion and not judicially cognizable.

Id. at 399 252 N.W. 2d at 131.

Thus, it seems clear that a constitutional amendment may legitimately be proposed by the legislature in the context of a "bill" which also contains ordinary legislation.

We see no reason, however, that the inclusion of a proposed constitutional amendment should, in any manner, interfere with the constitutional authority of the governor to approve or veto either the bill itself or items of appropriations therein to the extent that it contains ordinary legislation. Minn. Const. art. IV, § 23 clearly gives the governor authority to veto bills and items of appropriation contained within bills. While we conclude above that a constitutional amendment proposed by the members of the legislature is to be presented to the people for adoption without respect to gubernatorial action, the rationale and authorities supporting that result also clearly recognize the authority of the governor to review and

approve or veto ordinary legislation which is not to be presented to the people for approval. Indeed, we can conceive of no rational basis upon which to conclude the constitutional drafters would have intended to permit the legislature to insulate general legislation from exposure to veto simply by including it in a bill containing an amendment proposal.

Consequently, we conclude that the governor retains authority to review and approve or veto a bill containing general legislation presented by the legislature as well as items of appropriation, where appropriate, notwithstanding that the bill may also contain a proposed amendment. The effect of that action would be that the legislation contained in the vetoed bill or the vetoed appropriation items would not become law unless the veto is overridden in accordance with Article IV, Section 23, of the Constitution, but the proposed amendment will be presented for a vote of the people and, if approved by them, become part of the Constitution.

Very truly yours,

HUBERT H. HUMPHREY, III

Attorney General

JOHN R. TUNHEIM

Chief Deputy